

February 16, 2001

Ms. Anna M. Drake  
Department of Environmental and Development Services  
P.O. Box 532  
Yorktown, VA 23690

Dear Ms. Drake:

In reference to your letter dated February 6, 2001 regarding the proposed Dare Marina, we offer the following comments and regulatory interpretations:

*1. Are boat storage structures and parking lots considered “water-dependent” facilities?*

No. The proposed boat storage structure and parking area are not classified as water-dependant facilities and would therefore have to comply with full 100-foot RPA buffer requirements. According to § 9VAC10-20-40 of Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations), a water-dependent facility is a “development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation”. Because, in this case, the boat storage facility and parking area could exist and function outside of the Resource Protection Area (RPA), they would therefore not be considered water-dependent.

*2. Is it reasonable to allow encroachment (under the Noncomplying use and Development Waiver provisions) into the landward 50-foot buffer?*

According to § 9VAC10-20-150A of the Regulations, nonconforming use and development waivers are intended to be used for the expansion of structures in existence on the date of local program adoption. Because the proposed construction of a new parking lot and boat storage facility is not considered to be an expansion of an existing structure, it should not be eligible to

receive a noncomplying use and development waiver. In this case, the existing underground septic tank would not constitute a structure that is being expanded.

*3. Would the construction of the “proposed retail and eating facility” structure be considered redevelopment?*

According to § 9VAC10-20-40 of the Regulations, redevelopment is defined as “the process of developing land that is or has been previously developed”. Therefore, because the proposed retail and eating facility would be constructed on an area of existing development (impervious area) and no new impervious cover is proposed, it would be considered “redevelopment”. Therefore, the “retail and eating facility” would be allowed at the proposed location as long as there will be no increase in impervious cover and the project complies with the redevelopment provisions in § 23.1-372 of the York County Zoning Ordinance.

Thank you for seeking our opinion on these matters. To provide additional clarification on this issue, the only new, non water-dependant development allowed in the RPA buffer would be the construction of a principal structure and necessary utilities on a lot or parcel recorded prior to October 1, 1989 where there is insufficient buildable area outside the buffer. All other new development that is not water-dependent must occur outside the full 100-foot RPA buffer and could not encroach into the RPA without obtaining an exception from the York County board of zoning appeals.

I hope this information provides you with the necessary regulatory interpretations that you requested. If you have any additional questions or need further guidance, please do not hesitate to contact me at 1-800-243-7229.

Sincerely,

Douglas G. Wetmore  
Principal Environmental Planner

Cc: Martha Little, *CBLAD Chief of Environmental Planning*  
Joseph Sisler, P.E., *Local Program Coordinator*